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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

New Parent World, LLC, a New Jersey
for-profit corporation (d/b/a My Baby
Experts),

Plaintiff,

v.

True To Life Productions, Inc., an
Arizona for-profit corporation; Heritage
House '76, Incorporated, an Arizona for-
profit corporation; Brandon Monahan,
in his individual capacity,

Defendants.

Case No. 3:23-cv-08089-DGC

**MOTION FOR PROTECTIVE
ORDER RE PLAINTIFF'S
SUBPOENA TO TEXAS
PREGNANCY CARE NETWORK
AND TEXAS DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

(Expedited consideration requested)

Pursuant to Rule 26(c) and (g), Fed. R. Civ. P., Defendants (collectively, "Heritage House") hereby move for a protective order, requiring Plaintiff to withdraw its subpoena and to cease and desist from further contacting Texas Pregnancy Care Network (the "Network"), an organization that represents a network of pregnancy care providers with government agencies in Texas. The Network is a vital relationship for Heritage House's business because many of the pregnancy care providers who belong to the Network are Heritage House clients. The Network, however, has no relevant information concerning the claims or defenses in this lawsuit, the thrust of which are

1 allegations of copyright infringement (which copying Plaintiff has, notably, yet to
2 identify in discovery). The subpoena and other efforts to contact the Network are a
3 flagrant abuse of discovery—attempts to harass and hurt Heritage House’s important
4 relationships with no discernible connection to the claims or defenses asserted herein.

5 Plaintiff simultaneously served a subpoena on the Texas Department of Health
6 and Human Services. The requested information similarly has no bearing on the claims
7 or defenses asserted in this matter. While Heritage House does not have a direct
8 relationship with the agency, many of its pregnancy center clients do. Therefore,
9 Heritage House seeks an order requiring Plaintiff to withdraw this subpoena as well.

10 Accordingly, Heritage House respectfully requests a protective order to stop the
11 harassing and oppressive conduct in discovery. Heritage House also requests the Court
12 require Plaintiff to reimburse its fees in bringing this Motion and for any losses
13 resulting from this abusive discovery.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. SALIENT FACTS**

16 Out of concern for this very scenario, Heritage House has resisted identifying
17 the names of its customers in discovery. In subsequent briefing on the discovery
18 dispute, Plaintiff New Parent World (“NPW”) argued it was entitled to identify
19 Heritage House’s customers so it could take discovery from them, but NPW could not
20 articulate what the clients might know or have in their possession that would be
21 relevant to its claims.

22 The Court sustained Heritage House’s objection: “Plaintiff asserts that it needs
23 the information to find witnesses who can testify about the videos and written materials
24 provided to them by Defendants, but does not explain the relevancy of such testimony
25 in light of the fact that Defendants admit Plaintiff’s content and the accused content
26 were distributed to a wide audience.” (Doc. 46 at 6:15-19) (internal citations omitted).
27 The Court continued: “Plaintiff also states that it needs the customer identities to

1 establish infringement and damages, but does not explain how customer evidence will
2 establish infringement (which presumably will be shown by comparing Plaintiff's
3 works to the accused works) or damages (which presumably will be shown by evidence
4 of revenues earned by Defendants from the allegedly infringing works)." (*Id.* at 6:19-
5 24). "Because Plaintiff has not shown the relevancy of the requested information,
6 Defendants' objection is sustained." (*Id.* at 6:24-25).

7 As for the present dispute, NPW happens to know the identity of the Texas
8 Pregnancy Care Network (the "Network") because its former administrator, Roberta
9 Buchanan, had, during the course of the parties' relationship, (1) requested citations to
10 the studies referenced in NPW's videos; and (2) requested some changes to NPW's
11 videos,¹ which requests Heritage House forwarded on to NPW—and which changes
12 NPW made without issue. Nothing about these interactions make the Network and its
13 members more relevant to this lawsuit than Heritage House's other clients. NPW has
14 not alleged any wrongdoing relating to the requests (nor could they). The requests have
15 nothing to do with any of the claims or defenses asserted in this action.

16 NPW's counsel recently began requesting information about Ms. Buchanan
17 from Heritage House's counsel. Despite its limited relevance, Heritage House
18 explained her role in good faith, in attempt to help NPW's counsel understand the
19 document production.

20 NPW's counsel issued a subpoena to the Network (*see* doc. 55) and began
21 demanding Ms. Buchanan's contact information so counsel could contact her directly.
22 *See* **Exhibit A**.

25 ¹ The changes were requested to comply with certain state requirements, since the
26 pregnancy centers in the network often receive state funds. They included things like
27 removing footage of a baby with a blanket in its crib and footage of a mother who was
28 nursing while asleep (both of which raise SIDS concerns).

1 Heritage House's counsel raised concerns and requested that NPW's counsel
2 explain the relevance of the Network and its administrator in light of the important and
3 sensitive relationship Heritage House has with the Network. *Id.* NPW's counsel simply
4 argued NPW needed the information because it did not have it. *Id.* When continually
5 pressed as to its relevance (specifically of contact information for Ms. Buchanan),
6 NPW's counsel said relevance does not matter because she was not seeking
7 documents, she just wanted to call Ms. Buchanan to discuss the case. *Id.*

8 Heritage House then repeatedly asked NPW to hold off serving the subpoena
9 until the Court could rule on its forthcoming motion (this Motion). *See Exhibit B.*
10 Heritage House emphasized the sensitive nature and importance of the relationship
11 with the Network and explained that the lack of relevance appeared to be an attempt
12 to inflict harm on Heritage House with no reasonable connection to the case. *Id.*
13 Heritage House expressed concerns that the only apparent purpose for a call to the
14 Network would be so NPW's counsel could introduce herself as the attorney
15 representing a party suing Heritage House for copyright infringement. *Id.*

16 Despite Heritage House's plea, NPW refused. "We understand your position.
17 We disagree. We are moving forward with service, if it has not occurred already." *Id.*

18 NPW's Notice of Intent to Serve Subpoenas included two subpoenas, one to the
19 Network, the other to the Texas Department of Health and Human Services. (Doc. 55).
20 Neither nonparty has information relevant to NPW's claims. While Heritage House is
21 more concerned about its direct relationship with the Network, its clients have direct
22 relationships with the Texas Department of Health and Human Services. And there is
23 no reasonable basis for NPW to demand any of these documents.

24 The subpoenas sought the same 11 categories of documents, which read more
25 like a comprehensive set of requests for production served on a party to the litigation
26 (and seeks more than five years of records):
27
28

8. Any logs or records showing access to or distribution of breastfeeding or newborn care Content provided by any Defendant to, or on behalf of, the Network from January 1, 2019 to present.

1 9. Any logs or records showing edits or clarifications made on any
2 breastfeeding or newborn care Content provided by any Defendant to the Network
3 from January 1, 2019 to present.

4 10. Copies of all educational materials (e.g., videos, written materials)
5 provided by any Defendant relating to breastfeeding or newborn care Content provided
6 to, or distributed by, the Network or any of its subcontractors from January 1, 2019 to
7 present.

8 11. Copies of any certifications, licenses, or approvals provided by the
9 Network to any Defendant relating to breastfeeding or newborn care Content from
10 January 1, 2019 to present.

11 (Doc. 55-1 at 8-9, 16-17).

12 NPW seeks to create a veil of relevance by adding “related to breastfeeding or
13 newborn care,” but the responsive information would have no bearing on the claims or
14 defenses asserted in the case. The requests do not even amount to a fishing expedition
15 because there is nothing in these nonparties’ possession that speak to any of the
16 elements at issue. Several of the requests appear intended to uncover the identity of
17 Heritage House’s customers. Despite the Court’s prior ruling that NPW could not
18 compel Heritage House to identify its customers, NPW now seeks to impose that
19 burden on nonparties.

20 **II. A PROTECTIVE ORDER IS APPROPRIATE.**

21 Under Rule 26(c), Fed. R. Civ. P., the Court may, for good cause, enter a
22 protective order “to protect a party or person from annoyance, embarrassment,
23 oppression, or undue burden or expense,” which order may include, in relevant part,
24 forbidding certain discovery and forbidding inquiry into certain matters. Fed. R. Civ.
25 P. 26(c)(1)(A), (D). The Rule provides for shifting of expenses and other sanctions as
26 appropriate on a successful motion. Rule 26(c)(3); Rule 37(a)(5).

1 NPW's subpoenas to THHS and the Network, and its efforts to contact the
2 Network's administrator have no apparent connection to the claims or defenses
3 asserted in this action. NPW's own counsel even argued relevancy did not matter when
4 pressed on the relevance of the inquiry. *See* Exhibit A. If there is no relevance to the
5 inquiry, then the only possible purpose of the inquiry is to injure Heritage House's
6 important relationship with the Network and its clients. This is not an appropriate use
7 of discovery.

8 Accordingly, Heritage House requests entry of a protective order requiring
9 NPW to withdraw its subpoenas and to refrain from contacting the Network and
10 THHS. Plaintiff further requests reimbursement of its fees incurred in bringing this
11 Motion and for any losses resulting from this abuse of the discovery rules.

12 **III. THE SUBPOENA IS A VIOLATION OF RULE 26(G).**

13 Rule 26(g), Fed. R. Civ. P., requires all discovery requests to be signed by at
14 least one attorney of record, which signature "certifies that to the best of the person's
15 knowledge, information, and belief, formed after a reasonable inquiry," the discovery
16 request is "(i) consistent with these rules and warranted by existing law or by a
17 nonfrivolous argument for extending, modifying, or reversing existing law, or for
18 establishing new law; (ii) not interposed for any improper purpose, such as to harass,
19 cause unnecessary delay, or needlessly increase the cost of litigation; and (iii) neither
20 unreasonable nor unduly burdensome" Rule 26(g)(1)(B).

21 The Rule provides that "[i]f a certification violates this rule without substantial
22 justification, the court, on motion or on its own, must impose an appropriate sanction
23 on the signer, the party on whose behalf the signer was acting, or both." Rule 26(g)(3)
24 ("The sanction may include an order to pay the reasonable expenses, including
25 attorney's fees, caused by the violation.").

26 The Notice of Intent to Serve Subpoena Duces Tecum demonstrates NPW's
27 counsel signed both the Notice and the subject subpoenas. (Doc. 55 at 1; Doc. 55-1 at
28

2, 10). The certification on the subject subpoenas violated Rule 26(g) because the discovery is inconsistent with the discovery rules, interposed for an improper purpose, and is unreasonable and unduly burdensome.

Despite Rule 26(b) expressly limiting the scope of discovery to “any nonprivileged matter that is *relevant* to any party’s claim or defense and proportional to the needs of the case,” NPW’s counsel issued and served the subject subpoenas while simultaneously arguing relevancy does not matter. When counsel for Heritage House raised concerns about the potential damage caused by the subpoena and requested that NPW hold off serving it until the Court could weigh-in, NPW’s counsel refused and charged ahead with full knowledge that the irrelevant requests could harm Heritage House—not to mention the substantial and unjustified burden on the nonparties from the subpoenas’ request for five years’ worth of records in 11 discrete categories of documents. (*See* Doc. 55-1 at 8-9, 16-17).

Accordingly, the subpoenas evince a violation of Rule 26(g). This violation independently justifies an order requiring NPW to reimburse the fees incurred in bringing this Motion and for any losses resulting from this discovery.

IV. CONCLUSION

Due to the foregoing, Defendants respectfully request the Court enter a protective order requiring Plaintiff to withdraw its subpoenas (doc. 55) and refrain from further contacting the Texas Pregnancy Care Network and the Texas Department of Health and Human Services. Defendants also request the Court order Plaintiff to reimburse Defendants’ fees incurred in bringing this Motion and for any losses resulting from damages that might result from the discovery.

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1 Date: August 2, 2024

2 Respectfully submitted,

3 /s/ Aaron K. Haar

4 Maria Crimi Speth

5 Aaron K. Haar

6 **Jaburg & Wilk, P.C.**

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9 *Attorneys for Defendants True to Life*

10 *Productions, Inc., Heritage House '76,*

11 *Incorporated and Brandon Monahan*

12 ***Certificate Of Good Faith Consultation***

13 I hereby certify that the parties consulted regarding the subject subpoenas and
14 inquiries variously on July 29 and July 30, 2024 and were unable to resolve the matters
15 addressed herein. I believe further consultation would be futile.

16 /s/ Aaron K. Haar

17 ***Certificate of Service***

18 I hereby certify that on the 2d day of August, 2024, I electronically transmitted
19 the attached document to the Clerk's Office using the CM/ECF System for filing, and
20 for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

21 Krystle Delgado

22 Delgado Entertainment Law, PLLC

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/s/ Joy Brown